



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1300 and 1313

[Docket No. EP 665 (Sub-No. 1)]

Rail Transportation of Grain, Rate Regulation Review

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on June 10, 2015, at its offices in Washington, D.C., to further examine issues related to the accessibility of rate complaint procedures for grain shippers.

DATES: The hearing will be held on June 10, 2015, beginning at 9:30 a.m., in the Hearing Room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. June 11, 2015, will be reserved should a second day of testimony be necessary to accommodate all parties wishing to testify. The hearing will be open for public observation. Any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, the time requested, and a summary of the key points the speaker intends to address) no later than May 29, 2015. Notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's website when they are filed. Parties shall file hearing exhibits, if any, by June 10, 2015.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's website at "www.stb.dot.gov." Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 665 (Sub-No. 1), 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written submissions will be posted to the Board's website and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Where a railroad has market dominance—i.e., a shipper is captive to a single railroad—its transportation rates for common carrier service must be reasonable. 49 U.S.C. 10701(d)(1), 10702. The Board's general standards for judging the reasonableness of rail freight rates are set forth in Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d 520 (1985), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987). The Board has also adopted two simplified methods for determining the reasonableness of challenged rail rates, the Simplified Stand-Alone Cost (SAC) test and the Three-Benchmark test. See Simplified Standards for Rail Rate Cases (Simplified Standards), EP 646 (Sub-No. 1) (STB served Sept. 5,

2007), aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir.), vacated in part on reh'g, 584 F.3d 1076 (D.C. Cir. 2009). Under the Three-Benchmark method, the reasonableness of a challenged rate is determined by examining the challenged rate in relation to three benchmark figures, each of which is expressed as a revenue-to-variable cost (R/VC) ratio. Rate Regulation Reforms, EP 715, slip op. at 11 (STB served July 25, 2012).<sup>1</sup> If a challenged rate is above a reasonable confidence interval around the estimate of the mean for the adjusted comparison group, it is presumed unreasonable and, absent any "other relevant factors," the maximum lawful rate will be prescribed at that boundary level. See Simplified Standards, slip op. at 21-22.

By a decision served in this proceeding on December 12, 2013, the Board invited public comment on how to ensure that the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates. The Board sought input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.

The public comment period was intended to allow parties to consider and propose ways that the Board could make the rate reasonableness process more accessible to grain shippers. In the comments, parties have raised a number of proposals and identified a

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<sup>1</sup> Under Simplified-SAC, the Board determines whether a captive shipper is being forced to cross-subsidize other parts of the railroad's rail network by comparing the costs and revenues of the actual operations and services provided under the assumption that all existing infrastructure along the predominant route used to haul the complainant's traffic is needed to serve the traffic on that route. Rate Regulation Reforms, EP 715, slip op. at n.2 (STB served Mar. 13, 2015).

number of issues that merit further discussion. Accordingly, the Board will hold a public hearing beginning at 9:30 a.m., on June 10, 2015, at its offices in Washington, D.C., to further examine issues related to the accessibility of rate complaint procedures for grain shippers and provide interested persons the opportunity to comment on the modifications to the existing procedures and the alternative rate relief methodologies proposed during the public comment period. In addition to their own proposals and responses, the parties should be prepared to discuss the following issues:

*Jurisdictional Threshold.* In the comments, it was suggested that the Board's Uniform Railroad Costing System (URCS) prevents grain shippers from accessing potential rate relief because URCS over-estimates the cost of shipping grain. Although parties are currently prohibited from making movement-specific adjustments to URCS, parties are invited to discuss whether the Board should revisit this prohibition in determining the quantitative market dominance threshold in rate cases for grain shipments.

*Definition of Grain.* In the comments, some shippers argued in favor of an expansive definition of "grain" that includes both grain and grain products. Because certain grain products, such as ethanol, require different treatment in terms of railroad operations, interested parties should be prepared to discuss whether an expansive definition of "grain" is appropriate in this proceeding.

*Modifications and Alternatives to the Three-Benchmark Approach in Grain Rates Cases.* Several commenters argue that the Three-Benchmark test puts too many limitations on the types of shipments that a shipper can include in its comparison group

upon which the Board relies to determine if the railroad's rate is unreasonable.<sup>2</sup>

Accordingly, parties should be prepared to discuss the idea of allowing the use of non-defendant traffic and/or traffic with R/VC ratios below 180% in comparison groups for grain shipments.

In the comments, various parties have also proposed new methodologies that could be used specifically for rate cases involving grain shipments. These approaches include adopting a "Two-Benchmark" approach for grain shipments hauled by revenue adequate carriers<sup>3</sup> and replacing the existing Three-Benchmark approach with an "Ag Commodity Maximum Rate Methodology," which includes a "Revenue Adequacy Adjustment Factor."<sup>4</sup> To the extent that any parties feel that these approaches have merit or are flawed, they should be prepared to discuss.

Revenue Adequacy. Interested parties are invited to address whether the Board should consider the revenues and costs of Canadian carriers' full-system operations, to include the parent company and subsidiaries, when determining revenue adequacy in rate reasonableness challenges of grain shipments.

Aggregation of Claims. Interested parties are asked to address whether the Board should allow multiple agricultural farmers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding.

Other Ideas. Additionally, in further considering the matter of grain rates, parties are invited to discuss whether there are ways in which the Board could create greater

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<sup>2</sup> See Alliance for Rail Competition Opening, V.S. Fauth 22-24.

<sup>3</sup> See *id.* at 25.

<sup>4</sup> See National Grain and Feed Association Opening 27-35.

transparency for grain shippers regarding how railroads set rates. To that end, parties at the hearing are asked to address the disclosure requirements for agricultural tariff rates under 49 CFR 1300.5<sup>5</sup> and whether this requirement should be modified to allow for increased transparency. Parties are also asked to address the requirement that rail carriers file agricultural contract summaries under 49 CFR part 1313<sup>6</sup> and whether this requirement should be modified to allow for increased transparency.

### **Board Releases and Live Video Streaming Available via the Internet**

Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov." This hearing will be available on the Board's website by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9:30 a.m. on June 10, 2015.

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<sup>5</sup> Under § 1300.5(a), a rail carrier must publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to the same with respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof). The information published must include an accurate description of the services offered to the public; the specific applicable rates (or the basis for calculating the rates), charges, and service terms; and be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment. 49 CFR 1300.5(b). Additionally, the rail carrier must highlight any increases, reductions, and other changes so that the nature and effective dates of those changes are readily identifiable. Id.

<sup>6</sup> Section 1313 requires that rail carriers subject to the Board's jurisdiction promptly file a summary of each contract for the transportation of agricultural products (including grain as defined in 7 U.S.C. 75) and allows complaints to be filed regarding such contracts. 49 CFR 1313.1 and 1313.2. The level of information that must be provided in the summary varies depending on whether contract is for grain and whether the shipment is to a port. At a minimum the summary must include: the carrier name; the specific commodity; the shipper's identity; the rail car data; the rates; and the charges.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing will be held on June 10, 2015, at 9:30 a.m., in the Board's Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. Any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, the time requested, and a summary of the key points the speaker intends to address) no later than May 29, 2015.

The notices of intent to participate need not be served on the parties of record. Parties appearing at the hearing shall file hearing exhibits, if any, by June 10, 2015.

3. This decision is effective on its service date.

Decided: May 8, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Raina S. Contee

Clearance Clerk

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